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California Coastal Commission and State Coastal
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COASTAL CONSERVANCY
OAKLAND, CALIF.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
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13 **ACCESS FOR ALL, a California non-profit**
14 **corporation,**

15 Plaintiff,

16 v.

17 **LISETTE ACKERBERG TRUST, a Trust,**
18 **LISETTE ACKERBERG, individually and**
19 **as Trustee of the LISETTE ACKERBERG**
TRUST, and DOES 1 - 10, Inclusive,

20 Defendants.
21

Case No. BC405058

DECLARATION OF AARON
McLENDON IN SUPPORT OF REPLY IN
SUPPORT OF MOTIONS TO
INTERVENE, VACATE STIPULATED
JUDGMENT AND STAY CASE

Date: December 7, 2009
Time: 8:30 a.m.
Dept: 58
Judge: The Honorable Rolf Michael
Treu

Trial Date:
Action Filed: January 6, 2009

22 I, Aaron McLendon, declare as follows:

23 1. I am employed by the California Coastal Commission as a Statewide Enforcement
24 Analyst in the Long Beach office of the Commission. I am the enforcement staff person
25 assigned to handle the Lisette Ackerberg Trust and Lisette Ackerberg (Ackerberg) enforcement
26 matter involving a public access easement across the Ackerberg property in Malibu. The matters
27 stated in this declaration are personally known to me and, if called as a witness, I could and
28 would testify competently to them.

Exhibit 12: Declaration of Aaron McLendon

1 2. I recall a conversation with Steve Hoye, Executive Director of Access for All, sometime
2 in March 2009. I recall discussing the fact that Access for All had filed a lawsuit against
3 Ackerberg. I understood the purpose of the lawsuit was to remove the encroachments on the
4 property so the public could begin using the access easement. Mr. Hoye did not tell me he was
5 thinking of negotiating substitute access elsewhere for the Ackerberg public access easement.

6 3. A public hearing on a cease and desist order and restoration order regarding the
7 Ackerberg public access easement was originally scheduled for the Commission's June 2009
8 meeting. After notice of the meeting had been mailed to Ackerberg and interested parties,
9 Ackerberg's attorneys requested that staff continue the matter to July 2009 to allow them to meet
10 with Commission staff to discuss possible resolution of this administrative enforcement matter, as
11 discussed below. Commission enforcement staff took the matter off calendar to accommodate
12 Ackerberg's attorneys' request. Staff also told Ackerberg's attorneys before the requested
13 meeting that any settlement would have to include the opening of the Ackerberg easement.

14 4. On June 4, 2009 Chief of Enforcement Lisa Haage and I, along with other Commission
15 staff members, met with Access for All and the Coastal Law Enforcement Action Network
16 (CLEAN). Steve Hoye, Marcia Hanscom and attorney David Weinsoff attended representing
17 Access for All and CLEAN. This was a meeting that Access for All, CLEAN and the
18 Commission enforcement staff had been trying to schedule for over a month. Access for All and
19 CLEAN had requested the meeting to discuss a number of topics regarding Coastal Act
20 enforcement matters, including violation cases in which they were thinking about getting
21 involved. Commission staff wanted to talk with them about the complexities resulting from their
22 involvement in enforcement cases that the Commission staff is actively pursuing or is
23 contemplating pursuing. We specifically wanted to talk to them about ways for easement holders
24 or citizen suit plaintiffs to avoid undercutting Commission enforcement cases or existing permit
25 conditions. Because Access for All and CLEAN wanted to discuss such a broad array of cases,
26 Commission enforcement staff from headquarters and the district enforcement supervisors as well
27 as legal staff were involved in the meeting. When Peter Douglas, the Commission's Executive
28 Director, stopped in at the end of the meeting to say "hi" to Steve Hoye, Marcia Hanscom and

1 David Weinsoff, the topic of the Ackerberg easement came up. Mr. Douglas inquired about
2 Access for All's litigation seeking removal of encroachments from the easement. Mr. Hoye,
3 Executive Director for Access for All, assured him there was absolutely no deal between Access
4 for All and Ackerberg although they were talking because the judge requested they discuss the
5 possibility of settlement. Commission staff advised Mr. Hoye that staff would never agree to
6 exchange the Ackerberg easement for another easement or allow Ackerberg to pay her way out of
7 opening the easement. Commission staff also told Mr. Hoye that Access for All should not agree
8 to any such deal because if they did, staff would not support it.

9 5. On June 5, 2009, Executive Director Peter Douglas, Chief of Enforcement Lisa Haage
10 and I met with Ackerberg's counsel Diane R. Abbitt and Steven H. Kaufmann to discuss
11 resolving the administrative enforcement proceeding pending before the Commission.
12 Previously, Ms. Abbitt had requested to attend the June 4, 2009 meeting with Access for All and
13 CLEAN but I told her that meeting involved a completely different issue and would be taking
14 most of the day. On June 3, 2009, I received an email from Ms. Abbitt stating that David
15 Weinsoff, counsel for Access for All, would be attending the June 5 meeting. I immediately
16 called her and told her that it was inappropriate for outside parties to be involved in settlement
17 negotiations of enforcement matters. I also told her that because Access for All was not a party to
18 the upcoming administrative enforcement proceeding, Weinsoff could not attend.

19 6. At the June 5 meeting, Ms. Abbitt and Mr. Kaufmann proposed a settlement in which
20 Ackerberg would pursue and fund the opening of a County-owned easement upcoast in exchange
21 for extinguishing the Ackerberg easement. Ms. Haage, Executive Director Douglas and I
22 expressly rejected Ms. Abbitt's and Mr. Kaufmann's suggestion of exchanging the Ackerberg
23 easement for another easement. Mr. Douglas told them the Commission could not accept the
24 offer, that both easements should be opened, that the Ackerberg easement must be opened
25 whether or not the County-owned easement was opened and that enforcement staff would move
26 forward with an order directing Ackerberg to open the easement.

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8. I first learned about the stipulated judgment when Ackerberg's attorneys submitted written materials including the stipulated judgment on or about July 3, 2009 regarding the continued administrative enforcement proceeding involving the proposed cease and desist order and restoration order.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 17th day of November, 2009, at Long Beach, California.

A. H. M. Shaw

Aaron McLendon, Declarant

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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **Access for All v. Ackenberg**
Court: **Los Angeles Superior Court, Case No. BC405058**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266.

On **November 23, 2009**, I served the attached:

- 1. REPLY OF CALIFORNIA COASTAL COMMISSION AND STATE COASTAL CONSERVANCY IN SUPPORT OF MOTIONS TO INTERVENE, VACATE STIPULATED JUDGMENT AND STAY CASE;**
- 2. DECLARATION OF AARON McCLENDON IN SUPPORT OF REPLY IN SUPPORT OF MOTION TO INTERVENE, VACATE STIPULATED JUDGMENT AND STAY CASE**

by placing a true copy thereof enclosed in a sealed envelope with **FEDERAL EXPRESS**, addressed as follows:

J. Timothy Nardell
Nardell Chitsaz & Alden LLP
790 Mission Street
San Rafael, CA 94901
Attorneys for Plaintiff

David J. Weinsoff
Law Office of David J. Weinsoff
138 Ridgeway Avenue
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Attorney for Plaintiff

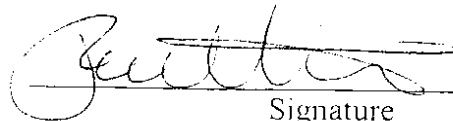
Steven H. Kaufmann
Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071
Attorney for Defendants

Diane R. Abbitt
Law Offices of Diane Abbitt
511 Fifth Street, Suite G
San Fernando, CA 91340
Attorney for Defendants

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **November 23, 2009**, at San Diego, California.

Roberta L. Matson

Declarant


Signature